

Notice of Allowability

Application No.

09/980,009

Examiner

Sharon Kennedy

Applicant(s)

HALL ET AL.

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment of January 26, 2005.
2. ☒ The allowed claim(s) is/are 3-6, 8-16 and 18-22.
3. ☒ The drawings filed on 1/26/05; 11/30/01 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Drawings

The drawings were received on January 26, 2005. These drawings are approved.

Allowable Subject Matter

Claims 3-6, 8-16, 18-22 are allowed.

The following is an examiner's statement of reasons for allowance: Lundgren '479 and Cox '052 exemplify the state of the art, however, these do not show or suggest the claimed structures of the implant. The patent to Suhonen, US 6,132,214 is similar to the claimed structures, see especially figure 9a, however, Suhonen does not disclose a body to permit direct release of a bioactive substance. Rather, the bioactive substance is "poured into the reservoirs." See column 6, lines 10+. The importance of the claimed body is well set forth in applicant's specification, and this distinguishes the claims over the prior art. Ashman, US 6,413,089 is similar in appearance to applicant's invention, however, again, there is no body and further in Ashman the space 44 between the implant and the tissue is filled with bioactive substances, not the implant itself. Ton, US 4,671,768 is interesting, but does not show or suggest the claimed structure or body. Ross, US 4,744,755 is similar in structure but does not disclose the use of a bioactive substance. The remaining new prior art is even farther away from the presently claimed invention. Additional prior art is cited but most of it does not pre-date the instant filing date. Accordingly, the claims are allowable.

Art Unit: 3762

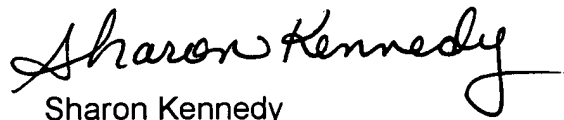
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Kennedy whose telephone number is 571/272-4948. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571/272-4955.

Information regarding the status of an application may be obtained by going to www.uspto.gov, clicking on "Status & IFW", entering the application number, and then clicking on one of the tabs to retrieve the appropriate information.


Sharon Kennedy
Primary Examiner
Art Unit 3762

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